

4. The availability of another to provide the services.

5. The value and nature of the ward's estate.

6. The hourly or other rate proposed by the guardian for the services.

(c) The amount of the compensation may be determined on an hourly basis, as a monthly stipend, or on any other basis that the court determines is reasonable under the circumstances. The court may establish the amount or basis for computing the guardian's compensation at the time of the guardian's initial appointment.

(2) REIMBURSEMENT OF EXPENSES. The guardian shall be reimbursed for the amount of the guardian's reasonable expenses incurred in the execution of the guardian's duties, including necessary compensation paid to an attorney, an accountant, a broker, and other agents or service providers.

(3) WHEN COURT APPROVAL REQUIRED. A court must approve compensation and reimbursement of expenses before payment to the guardian is made, but court approval need not be obtained before charges are incurred.

SUBCHAPTER VI

VOLUNTARY PROCEEDINGS:

CONSERVATORS

54.76 Conservator; appointment; duties and powers; termination.

(6) The court that appointed the conservator shall have continuing jurisdiction over the conservator. Any of the following, if committed by a conservator with respect to a conservatee or the conservatee's estate, constitutes cause for removal of the conservator under sub. (7) (a) 5:

(a) Failing to timely file an inventory or account, as required under this chapter, that is accurate and complete.

(b) Committing fraud, waste, or mismanagement.

1 (c) Abusing or neglecting the conservatee or knowingly permitting others to do
2 so.

3 (d) Engaging in self-dealing.

4 (e) Failing to adequately provide for the personal needs of the conservatee from
5 available estate assets and public benefits.

6 (g) Failing to act in the best interests of the conservatee.

****NOTE: Section 54.76 (6) does not contain all the elements for cause for removal
of a guardian that are specified in s. 54.68 (2). Please review.

7 (7) (a) The powers of a conservator may not be terminated without a hearing
8 and may not be terminated unless any of the following occurs:

9 1. The court removes the conservator on the court's own motion or under sub.
10 (4).

11 2. The court appoints a guardian for the individual whose estate is conserved.

12 3. The individual whose estate is conserved dies.

13 4. The conservator or individual whose estate is conserved changes residence
14 to another state.

****NOTE: Instead of drafting s. 54.76 (7) (a) 5. concerning the court's receipt of
"notice from an interested person," I allowed anyone to file a petition under s. 54.76 (4).
Please review.

15 5. The court finds cause, as specified in sub. (6), for removal of the conservator.

16 (b) If anyone objects to termination of the conservatorship and alleges that the
17 individual whose estate is conserved is appropriate for appointment of a guardian,
18 the court may stay the hearing under par. (a) for 14 days to permit any interested
19 person to file a petition for guardianship. If no petition is filed, the court may
20 terminate the conservatorship and may appoint a guardian ad litem for the
21 individual.

***NOTE: I did not add the authority for the guardian ad litem to contact the county Adult Protective Services unit; statutory authorization is not needed for such an action.

1 **(8)** If a court terminates a conservatorship or a conservator resigns, is removed,
2 or dies, the conservator or the conservator's personal representative shall promptly
3 render a final account to the court and to the former conservatee, any guardian of the
4 former conservatee, or any deceased conservatee's personal representative or special
5 administrator, as appropriate. If the conservator dies and the conservator and the
6 deceased conservatee's personal representative or special administrator are the
7 same person, the deceased conservatee's personal representative or special
8 administrator shall give notice of the termination and rendering of the final account
9 to all interested persons of the conservatee's estate.

***NOTE: This provision mirrors s. 54.66 (1). Please review.

10 **SECTION 32.** 343.06 (1) (L) of the statutes is created to read:

11 343.06 (1) (L) To any person who has been declared incompetent under s. 54.25
12 (2) (c) 1. d. to apply for an operator's license.

13 **SECTION 33.** 343.31 (title) of the statutes is amended to read:

14 **343.31 (title) Revocation or suspension of licenses after certain**
15 **convictions or declarations.**

16 **SECTION 34.** 343.31 (2x) of the statutes is created to read:

17 343.31 (2x) The department shall suspend a person's operating privilege upon
18 receiving a record of a declaration under s. 54.25 (2) (c) 1. d. that the person is
19 incompetent to apply for an operator's license. The department may reinstate the
20 person's operator's license upon receiving a record of a declaration that the person
21 is no longer incompetent to apply for an operator's license under s. 54.25 (2) (c) 1. d.,
22 if the person is otherwise qualified under this chapter to obtain an operator's license.

23 **SECTION 35.** 343.31 (3) (a) of the statutes is amended to read:

1 343.31 (3) (a) Except as otherwise provided in this subsection or sub. (2m) or
2 (2x), all revocations or suspensions under this section shall be for a period of one year.

3 **SECTION 36.** 440.121 of the statutes is created to read:

4 **440.121 Credential denial, nonrenewal and revocation based on**
5 **incompetency.** Notwithstanding any other provision of chs. 440 to 480 relating to
6 issuance or renewal of a credential, the department shall deny an application for an
7 initial credential or credential renewal or revoke a credential issued to an individual
8 for whom the department receives a record of a declaration under s. 54.25 (2) (c) 1.
9 d. stating that the individual is incompetent to apply for a credential under chs. 440
10 to 480.

11 **SECTION 37.** 757.48 (1) (a) of the statutes is amended to read:

12 757.48 (1) (a) Except as provided in s. 879.23 (4), in all matters in which a
13 guardian ad litem is appointed by the court, the guardian ad litem shall be an
14 attorney admitted to practice in this state. In order to be appointed as a guardian
15 ad litem under s. 767.045, an attorney shall have completed 3 hours of approved
16 continuing legal education relating to the functions and duties of a guardian ad litem
17 under ch. 767. In order to be appointed as a guardian ad litem under s. 54.40 (1), an
18 attorney shall have completed any approved continuing legal education
19 requirements.

20 **SECTION 38.** 880.01 (1) of the statutes is renumbered 54.01 (2) and amended
21 to read:

22 54.01 (2) "Agency" means any public or private board, corporation, or
23 association which, including a county department under s. 51.42 or 51.437, that is
24 concerned with the specific needs and problems of ~~mentally retarded,~~
25 ~~developmentally disabled, mentally ill, alcoholic, drug dependent and aging persons,~~

1 including a county department under s. 51.42 or 51.437 individuals with
2 developmental disability, mental illness, alcoholism, or drug dependency and of
3 aging individuals.

4 SECTION 39. 880.01 (2) of the statutes is renumbered 54.01 (11) and amended
5 to read:

6 54.01 (11) "~~Developmentally disabled person~~ Individual with developmental
7 disability" means any individual having a disability attributable to mental
8 retardation, cerebral palsy, epilepsy, autism or another neurological condition
9 closely related to mental retardation or requiring treatment similar to that required
10 for ~~mentally retarded~~ individuals with mental retardation, which has continued or
11 can be expected to continue indefinitely, substantially impairs the individual from
12 adequately providing for his or her own care or custody, and constitutes a substantial
13 handicap to the afflicted individual. The term does not include ~~a person an~~
14 individual affected by senility which is primarily caused by the process of aging or
15 ~~the infirmities of aging~~ degenerative brain disorder.

16 SECTION 40. 880.01 (3) of the statutes is renumbered 54.01 (7) and amended
17 to read:

18 54.01 (7) "Guardian" means ~~one a person~~ appointed by a court under s. 54.10
19 ~~to have care, custody and control of the person~~ act on behalf of a minor or an
20 individual determined incompetent or the management of to manage the estate or
21 provide for the personal needs of a minor, an individual determined incompetent, or
22 a spendthrift.

****NOTE: I did not include corporate guardians or entity guardians in this definition as requested. Please look at the definition of "person" in s. 990.01 (26), stats., (which applies to all the statutes). It encompasses corporate guardians and entity guardians. This definition indicates that only a guardian of the estate is appointed for a spendthrift; correct?

1 **SECTION 41.** 880.01 (4) of the statutes is repealed.

2 **SECTION 42.** 880.01 (5) of the statutes is repealed.

3 **SECTION 43.** 880.01 (6) and (7) of the statutes are repealed.

4 **SECTION 44.** 880.01 (7m) of the statutes is repealed.

5 **SECTION 45.** 880.01 (8) of the statutes is repealed.

6 **SECTION 46.** 880.02 of the statutes is renumbered 54.30 (1) and amended to
7 read:

8 54.30 (1) ~~JURISDICTION IN CIRCUIT COURT~~. The circuit court ~~shall have~~ has subject
9 matter jurisdiction over all petitions for guardianship. A guardianship of the estate
10 of any person, once granted, shall extend to all of his or her estate in this state and
11 shall exclude the jurisdiction of every other circuit court, except as provided in ch.
12 786.

 ***NOTE: I believe that you have changes for this subsection, based on changes
from the Legislative Council ch. 55 committee, but am not sure what they are.

 ***NOTE: I did not draft language in your proposal that establishes jurisdiction in
circuit court over all petitions for protective placement, as such a provision properly
belongs in ch. 55. Do you want me to draft it there? Or, because ch. 55, stats., is proposed
to undergo extensive changes under the Legislative Council committee, perhaps such a
provision, if not included in the Legislative Council proposal, should be an amendment
to one of the committee's appropriate bills.

13 **SECTION 47.** 880.03 of the statutes is repealed.

14 **SECTION 48.** 880.04 (title) of the statutes is renumbered 54.12 (title) and
15 amended to read:

16 **54.12 (title) Exceptions to appointment of guardian.**

17 **SECTION 49.** 880.04 (1) of the statutes is renumbered 54.46 (7) and amended
18 to read:

19 54.46 (7) **EMANCIPATION OF MARRIED MINORS.** Except for ~~minors~~ a minor found
20 to be incompetent, upon marriage, a minor ~~shall~~ is no longer be a proper subject for

1 guardianship of the person and a. A guardianship of the person is revoked by the
2 marriage of a minor ward. Upon application, the court may release in whole or in
3 part the estate of a minor ward to the ward upon the ward's marriage. ~~Upon~~
4 ~~marriage, the guardianship of an incompetent is subject to review under s. 880.34.~~

****NOTE: I repealed the last sentence (it is broader than merely applying to a minor), but am uncertain if that is what you want. Your proposal does not touch s. 880.34 (2)--do you no longer want to have marriage of an incompetent considered as a trigger for review of the guardianship?

5 **SECTION 50.** 880.04 (2) of the statutes is renumbered 54.12 (1) and amended
6 to read:

7 54.12 (1) SMALL ESTATES. If a minor or an incompetent, except for his or her
8 incapacity, is entitled to possession of possess personal property of a value of valued
9 at \$10,000 or less, any court ~~wherein~~ in which an action or proceeding involving said
10 the property is pending may, ~~in its discretion~~, without requiring the appointment of
11 a guardian, order that the clerk of court do one of the following:

****NOTE: I have assumed from the language in par. (a) (below) that the clerk of court would perform these functions. Correct?

12 (a) Deposit the property in a savings account in a bank, ~~the payment of whose~~
13 ~~accounts in cash immediately upon default of the bank are~~ or other financial
14 institution insured by an agency of the federal deposit insurance corporation; deposit
15 in a savings account in a savings bank or a savings and loan association that has its
16 deposits insured by the federal deposit insurance corporation; deposit in a savings
17 account in a credit union having its deposits guaranteed by the Wisconsin credit
18 union savings insurance corporation or by the national board, as defined in s. 186.01
19 (3m); government or invest the property in interest-bearing obligations of the
20 United States. The fee for ~~the clerk's services~~ of the clerk of court in depositing and
21 disbursing the funds under this paragraph is prescribed in s. 814.61 (12) (a).

1 (b) ~~Payment~~ Make payment to the natural guardian of the minor or to the
2 person having actual custody of the minor.

****NOTE: The proposed material referred to "the natural guardian of the minor, as defined in sub. _____," but no definition was included, unless you were referring to the definition of "minor." What is a "natural" guardian? Is it the parent?

3 (c) ~~Payment~~ Make payment to the minor.

4 (d) ~~Payment~~ Make payment to the person having actual or legal custody of the
5 incompetent or to the person providing for the incompetent's care and maintenance
6 for the benefit of the incompetent.

7 **SECTION 51.** 880.04 (2m) of the statutes is renumbered 54.12 (2) and amended
8 to read:

9 54.12 (2) INFORMAL ADMINISTRATION. If a minor or an incompetent, except for
10 his or her incapacity, is entitled to possession of personal property of a value of \$5,000
11 \$10,000 or less from an estate administered through informal administration under
12 ch. 865, the personal representative may, without the appointment of a guardian, do
13 any of the following:

14 (a) With the approval of the register in probate, take one of the actions ~~under~~
15 specified in sub. (2) (1) (a) to (e).

16 (b) With the approval of the guardian ad litem of the minor or incompetent, take
17 one of the actions ~~under~~ specified in sub. (2) (1) (a) to (e) and file proof of the action
18 taken and of the approval of the guardian ad litem with the probate registrar instead
19 of filing a receipt under s. 865.21.

20 **SECTION 52.** 880.04 (3) of the statutes is renumbered 54.12 (3) and amended
21 to read:

22 54.12 (3) UNIFORM GIFTS AND TRANSFERS TO MINORS. If a minor, except for his or
23 her incapacity, is entitled to possession of personal property of any value, any court

1 ~~wherein in which~~ an action or proceeding involving the property is pending may,
2 without requiring the appointment of a guardian, order payment, subject to any
3 limitations the court may impose, to a custodian for the minor designated by the
4 court under ~~ss. 880.61 to 880.72 subch. III of ch. 880~~ or under the uniform gifts to
5 minors act or uniform transfers to minors act of any other state.

 ***NOTE: This cross-reference must be fixed if you choose to renumber the
 remaining subchapters in ch. 880.

6 **SECTION 53.** 880.05 of the statutes is renumbered 54.30 (2) and amended to
7 read:

8 54.30 (2) VENUE. All petitions for guardianship of residents of the state shall
9 be directed to the circuit court of the county of residence of the ~~person subject to~~
10 guardianship proposed ward or of the county in which the ~~person proposed ward~~ is
11 physically present. A petition for guardianship of the person or estate of a
12 nonresident may be directed to the circuit court of any county ~~where~~ in which the
13 ~~person nonresident~~ or any property of the nonresident may be found.

 ***NOTE: I did not draft language of your proposal that requires that petitions for
 protective placement be directed to the circuit court, because such a provision more
 properly belongs in ch. 55. Do you want me to draft it there?

 ***NOTE: Please let me know specifically what you want me to do about the
 definition of "residence" and change of residence of a ward by a guardian.

14 **SECTION 54.** 880.06 (title) of the statutes is renumbered 54.30 (3) (title).

15 **SECTION 55.** 880.06 (1) of the statutes is renumbered 54.30 (3) (a) and amended
16 to read:

17 54.30 (3) (a) *Original proceeding.* The court ~~wherein in which~~ a petition is first
18 filed shall determine venue. ~~If it is determined~~ the court determines that venue lies
19 in another county, the court shall order the entire record certified to the proper court.
20 A court ~~wherein~~ in which a subsequent petition is filed shall, ~~upon being if it is~~

1 satisfied of that an earlier filing took place in another court, summarily dismiss such
2 the petition.

3 **SECTION 56.** 880.06 (2) of the statutes is renumbered 54.30 (3) (b) (intro.) and
4 amended to read:

5 54.30 (3) (b) (intro.) *Change of residence of ward ~~or guardian~~*. If a guardian
6 removes from the county where appointed to another county within the state or a
7 ward removes from the county in which he or she has resided changes residence from
8 one county to another county within the state, the circuit court for the county in
9 which the ward resides may appoint a new guardian as provided by law for the
10 appointment of a guardian. Upon verified petition of the new guardian, accompanied
11 by a certified copy of appointment and bond if the appointment is in another county,
12 and upon the notice prescribed by s. 879.05 to the originally appointed guardian,
13 unless he or she is the same person, and to any other persons that the court shall
14 order, the court of original appointment may order the guardianship accounts settled
15 and the property delivered to the new guardian. venue may be transferred to the
16 ward's new county of residence under the following procedure:

17 **SECTION 57.** 880.07 (title) of the statutes is renumbered 54.34 (title) and
18 amended to read:

19 **54.34 (title) Petition; fees for guardianship.**

20 **SECTION 58.** 880.07 (1) (intro.) of the statutes is renumbered 54.34 (1) (intro.)
21 and amended to read:

22 54.34 (1) (intro.) Any relative, ~~public official or other person~~, may petition for
23 the appointment of a guardian of a person subject to guardianship for an individual.
24 Such ~~The~~ petition shall state, so far as may be all of the following, if known to the
25 petitioner:

****NOTE: I did not add "or agency" after "person" in s. 54.34 (1), as requested; the definition of "person" in 990.01 (26), stats., which controls terms used throughout the statutes, is broad enough to encompass agencies.

1 **SECTION 59.** 880.07 (1) (a) of the statutes is renumbered 54.34 (1) (a).

2 **SECTION 60.** 880.07 (1) (b) of the statutes is renumbered 54.34 (1) (b) and
3 amended to read:

4 54.34 (1) (b) The specific nature of the proposed ward's alleged incapacity-with
5 ~~specification of the incompetency~~ or spendthrift habits.

6 **SECTION 61.** 880.07 (1) (c) of the statutes is renumbered 54.34 (1) (c).

7 **SECTION 62.** 880.07 (1) (d) of the statutes is renumbered 54.34 (1) (d) and
8 amended to read:

9 54.34 (1) (d) Any assets of the proposed ward previously derived from or
10 benefits of the proposed ward now due and payable from the U.S. department of
11 veterans affairs.

12 **SECTION 63.** 880.07 (1) (e) of the statutes is renumbered 54.34 (1) (e).

13 **SECTION 64.** 880.07 (1) (f) of the statutes is renumbered 54.34 (1) (f).

14 **SECTION 65.** 880.07 (1) (g) of the statutes is renumbered 54.34 (1) (g).

15 **SECTION 66.** 880.07 (1) (h) of the statutes is renumbered 54.34 (1) (h) and
16 amended to read:

17 54.34 (1) (h) The names and post-office addresses of the ~~spouse and~~
18 ~~presumptive or apparent adult heirs of the proposed ward, and all other persons~~
19 ~~believed by the petitioner to be interested parties.~~

20 **SECTION 67.** 880.07 (1) (i) of the statutes is renumbered 54.34 (1) (i) and
21 amended to read:

1 54.34 (1) (i) The name and post-office address of the person or institution
2 ~~having the, if any, that has care and custody of the proposed ward or the facility, if~~
3 ~~any, that is providing care to the proposed ward.~~

4 **SECTION 68.** 880.07 (1) (j) of the statutes is renumbered 54.34 (1) (j) and
5 amended to read:

6 54.34 (1) (j) The interest of the petitioner, and, if a public official or creditor is
7 the petitioner, then the fact of indebtedness ~~or continuing liability for maintenance~~
8 ~~or continuing breach of the public peace as well as~~ and the authority of the petitioner
9 to act.

10 **SECTION 69.** 880.07 (1m) of the statutes is repealed.

11 **SECTION 70.** 880.07 (2) of the statutes is renumbered 54.34 (2) and amended
12 to read:

13 54.34 (2) A petition for guardianship may also include an application for
14 protective placement or protective services or both under ch. 55.

15 **SECTION 71.** 880.07 (4) of the statutes is repealed.

 ****NOTE: Instead of moving s. 54.34 (3) (renumbered from 880.07 (4)), stats., I
 repealed it, because, as you noted, it's redundant to s. 54.60 (5).

16 **SECTION 72.** 880.08 (intro.) of the statutes is renumbered 54.38 (2) (intro.) and
17 amended to read:

18 54.38 (2) ~~NOTICE OF HEARING FOR APPOINTMENTS AND REHEARINGS, SERVICE, AND~~
19 ~~DELIVERY~~ (intro.) Upon the filing of a petition for guardianship, ~~and the court being~~
20 of the person or of the estate, including appointment or change of a guardian, if the
21 court is satisfied as to compliance with s. ~~880.07~~ 54.34, the court shall, except as
22 provided in sub. (3), order service of notice on the proposed ward and guardian, if any.

1 and delivery of notice by the petitioner to interested persons of the time and place
2 of the hearing as follows:

3 **SECTION 73.** 880.08 (1) (title) of the statutes is repealed.

4 **SECTION 74.** 880.08 (1) of the statutes is renumbered 54.38 (2) (a) and amended
5 to read:

6 54.38 (2) (a) ~~A petitioner shall have notice served of a petition for appointment~~
7 ~~or change of a guardian upon~~ On the proposed incompetent ward and existing
8 guardian, if any, by personal service at least 10 days before the time set for hearing.
9 If ~~such proposed incompetent~~ the proposed ward is in custody or confinement, ~~a the~~
10 petitioner shall have notice served by registered or certified mail on the proposed
11 incompetent's ward's custodian, who shall immediately serve it on the proposed
12 incompetent ward. The process server or custodian shall inform the proposed
13 incompetent ward of the complete contents of the notice ~~and certify thereon~~ and
14 petition, motion, or other required document; certify on the notice that the process
15 server or custodian served and informed the proposed incompetent ~~and returned~~
16 ward; and return the certificate and notice to the circuit judge. ~~The notice shall~~
17 ~~include the names of all persons who are petitioning for guardianship. A copy of the~~
18 ~~petition shall be attached to the notice. The court shall cause the proposed~~
19 ~~incompetent, if able to attend, to be produced at the hearing. The proposed~~
20 ~~incompetent is presumed able to attend unless, after a personal interview, the~~
21 ~~guardian ad litem certifies in writing to the court the specific reasons why the person~~
22 ~~is unable to attend. If the person is unable to attend a hearing because of physical~~
23 ~~inaccessibility or lack of transportation, the court shall hold the hearing in a place~~
24 ~~where the person may attend if requested by the proposed ward, guardian ad litem,~~
25 ~~adversary counsel or other interested person. Such notice shall also be given~~

1 ~~personally or by mail at least 10 days before the hearing to the proposed~~
2 ~~incompetent's counsel, if any, guardian ad litem, presumptive adult heirs or other~~
3 ~~persons who have legal or physical custody of the proposed incompetent whose~~
4 ~~names and addresses are known to the petitioner or can with reasonable diligence~~
5 ~~be ascertained, to any governmental or private agency, charity or foundation from~~
6 ~~which the proposed incompetent is receiving aid and to such other persons or entities~~
7 ~~as the court may require. The court shall then proceed under s. 880.33 court.~~

8 **SECTION 75.** 880.08 (2) of the statutes is repealed.

9 **SECTION 76.** 880.08 (3) (title) of the statutes is repealed.

10 **SECTION 77.** 880.08 (3) (am) (intro.) of the statutes is renumbered 54.38 (3)
11 (intro.) and amended to read:

12 54.38 (3) NOTICE OF HEARING FOR APPOINTMENT OF GUARDIAN FOR A MINOR. (intro.)
13 ~~When~~ If the proposed ward is a minor, notice shall be given as provided in s. 879.05
14 the court shall order distribution of notice by the petitioner of the time and place of
15 the hearing to all of the following persons, if applicable:

16 **SECTION 78.** 880.08 (3) (am) 1. of the statutes is renumbered 54.38 (3) (a) and
17 amended to read:

18 54.38 (3) (a) The proposed ward's spouse, if any.

19 **SECTION 79.** 880.08 (3) (am) 2. of the statutes is renumbered 54.38 (3) (b) and
20 amended to read:

21 54.38 (3) (b) The proposed ward's parents parent, unless the parent's parental
22 rights have been judicially terminated.

23 **SECTION 80.** 880.08 (3) (am) 3. of the statutes is renumbered 54.38 (3) (c) and
24 amended to read:

1 54.38 (3) (c) ~~A minor~~ The proposed ward, if the proposed ward is over 14 years
2 of age ~~unless the minor appears at the hearing.~~

3 **SECTION 81.** 880.08 (3) (am) 4. of the statutes is renumbered 54.38 (3) (d) and
4 amended to read:

5 54.38 (3) (d) Any other person, ~~agency, institution, welfare department or other~~
6 ~~entity having~~ that has the legal or actual physical custody of the minor.

 ***NOTE: I did not change "that" to "who," as requested, since the term "person"
may encompass units of government, etc.

7 **SECTION 82.** 880.08 (3) (e) of the statutes is repealed.

8 **SECTION 83.** 880.08 (4) of the statutes is renumbered 54.38 (4) and amended
9 to read:

10 54.38 (4) REHEARINGS. Notice of a rehearing to determine if a ward is a proper
11 subject to continue under guardianship shall be given as required ~~for the~~
12 ~~appointment of a guardian~~ under subs. (1), (2), and (3).

13 **SECTION 84.** 880.09 (intro.) of the statutes is renumbered 54.15 (intro.) and
14 amended to read:

15 **54.15 Nomination; selection of guardians** **Selection of guardian;**
16 **nominations; preferences; other criteria.** (intro.) The court shall do one of the
17 following and shall consider all of the following nominations ~~made by any interested~~
18 ~~person and, in its discretion, shall appoint a proper guardian, having due regard for~~
19 ~~the following~~ , applicable preferences, and criteria in determining who is appointed
20 as guardian:

21 **SECTION 85.** 880.09 (1) (title) of the statutes is repealed.

22 **SECTION 86.** 880.09 (1) of the statutes is renumbered 54.15 (4) (b) and amended
23 to read:

1 54.15 (4) (b) A minor over 14 years may in writing in circuit court nominate his
2 or her own guardian, but if the minor is in the armed service, is ~~without~~ outside of
3 the state, or if other good reason exists, the court may dispense with the minor's right
4 of nomination.

***NOTE: Have I amended this paragraph as you wish?

5 **SECTION 87.** 880.09 (2) of the statutes is renumbered 54.15 (5) and amended
6 to read:

7 54.15 (5) ~~PREFERENCE~~ PARENT OF A PROPOSED WARD. If one or both of the parents
8 of a minor, ~~a developmentally disabled person or a person with other like incapacity~~
9 or an individual with developmental disability are suitable and willing, the court
10 shall appoint one or both of them as guardian unless the proposed ward objects. The
11 court ~~shall appoint a corporate guardian under s. 880.35 only if no suitable~~
12 ~~individual guardian is available.~~

***NOTE: Your instructions on this subsection are as follows:

“... please delete “or other person with other like incapacity” and change. Perhaps we should check with WCA as to whether there are any other situations where parents should be preferred ...?”. How do you want me change the phrase? Have you been able to check with WCA?

Should the parent of a spendthrift receive preference under this subsection?
(Current law does not mention parents of spendthrifts.)

13 **SECTION 88.** 880.09 (3) (title) of the statutes is repealed.

14 **SECTION 89.** 880.09 (3) of the statutes is renumbered 54.15 (4) (c) and amended
15 to read:

16 54.15 (4) (c) If neither parent of a minor who has not attained the age of 15 is
17 suitable and willing to be appointed guardian, the court may appoint the nominee
18 of a minor.

***NOTE: Have I amended this paragraph as you wish?

19 **SECTION 90.** 880.09 (4) of the statutes is repealed.

1 **SECTION 91.** 880.09 (5) of the statutes is repealed.

2 **SECTION 92.** 880.09 (6) of the statutes is renumbered 54.15 (6) and amended
3 to read:

4 54.15 (6) ~~TESTAMENTARY GUARDIANSHIP OF CERTAIN PERSONS~~ NOMINATION BY
5 PROPOSED WARD'S PARENTS. Subject to the rights of a surviving parent, a parent may
6 by will nominate a guardian and successor guardian of the person or estate ~~of~~ for any
7 of his or her minor children who ~~are~~ is in need of guardianship. For ~~a person over~~
8 ~~the age of an individual who is aged 18 or older and is~~ found to be in need of
9 guardianship under s. 880.33 54.10 by reason of a developmental disability or ~~other~~
10 ~~like incapacity~~ serious and persistent mental illness, a parent may by will nominate
11 a testamentary guardian. The parent may waive the requirement of a bond for such
12 an estate that is derived through a will.

13 **SECTION 93.** 880.09 (7) (title) of the statutes is repealed.

14 **SECTION 94.** 880.09 (7) of the statutes is renumbered 54.15 (4) (a) and amended
15 to read:

16 54.15 (4) (a) Any ~~person~~ individual other than a minor aged 14 years or younger
17 may, at ~~such time as~~ if the person has sufficient capacity individual does not have
18 incapacity to such an extent that he or she is unable to form an intelligent preference,
19 execute a written instrument, in the same manner as the execution of a will under
20 s. 853.03, nominating ~~a person~~ another to be appointed as guardian of his or her
21 person or ~~property~~ estate or both ~~in the event that~~ if a guardian is in the future
22 appointed. ~~Such nominee shall be appointed as guardian by the~~ for the individual.
23 The court shall appoint this nominee as guardian unless the court finds that the
24 appointment of ~~such nominee~~ is not in the best interests of the ~~person for whom, or~~
25 ~~for whose property, the guardian is to be appointed~~ proposed ward.

1 **SECTION 95.** 880.10 of the statutes is renumbered 54.38 (5) and amended to
2 read:

3 54.38 (5) NOTICE OF APPOINTMENT OF GUARDIAN OF A MINOR WARD. If for any reason
4 the court fails to appoint as guardian the nominee of the minor, the guardian who
5 qualifies shall give notice of the guardian's appointment to the minor by certified
6 mail addressed to the minor's last-known post-office address and shall file an
7 affidavit of such ~~the mailing shall be filed~~ with the court within 10 days after the
8 issuance of letters notice is given.

9 **SECTION 96.** 880.12 of the statutes is repealed.

10 **SECTION 97.** 880.125 of the statutes is repealed.

11 **SECTION 98.** 880.13 (title) of the statutes is renumbered 54.46 (5) (title).

12 **SECTION 99.** 880.13 (1) of the statutes is renumbered 54.46 (5) (a) and amended
13 to read:

14 54.46 (5) (a) *Form Amount and sufficiency of bond.* ~~Upon the appointment of~~
15 ~~a guardian of the estate of a ward, except as provided under s. 880.60 (9), the court~~
16 ~~may require a bond given in accordance with ch. 878 and s. 895.345~~ The order under
17 sub. (3) shall specify the amount of any bond required to be given by the guardian
18 of the estate, conditioned upon the faithful performance of the duties of the guardian
19 of the estate. No bond may be required for the guardian of the person.

20 **SECTION 100.** 880.13 (2) (title) of the statutes is renumbered 54.46 (5) (b) (title).

21 **SECTION 101.** 880.13 (2) (a) of the statutes is renumbered 54.46 (5) (b) (intro.)
22 and amended to read:

23 54.46 (5) (b) (intro.) Unless required under s. 880.60 (9), the court may waive
24 the requirement of a bond at under any of the following circumstances:

25 1. At any time in its discretion or if

1 2. If so requested in a will wherein in which a nomination appears.

2 **SECTION 102.** 880.13 (2) (b) of the statutes is renumbered 54.46 (5) (b) 3. and
3 amended to read:

4 54.46 (5) (b) 3. ~~Whenever~~ If a guardian has or will have possession of funds of
5 the ward with a total value of \$40,000 \$100,000 or less, and the court ~~may direct~~
6 directs deposit of the funds in an insured account of a bank, credit union, savings
7 bank, or savings and loan association in the name of the guardian and the ward and
8 payable only upon further order of the court. ~~In such event the court may waive the~~
9 ~~requirement of a bond.~~

10 **SECTION 103.** 880.13 (3) of the statutes is repealed.

11 **SECTION 104.** 880.14 of the statutes is renumbered 54.46 (6) and amended to
12 read:

13 54.46 (6) ~~WHEN LETTERS TO BE ISSUED~~ LETTERS OF GUARDIANSHIP. ~~When~~ If a
14 guardian of the estate has given bond as, if required, and the bond has been approved
15 by the judge court, letters under the seal of the court shall be issued to the guardian
16 of the estate. If a court determination and order appointing a guardian of the person
17 is entered, letters under the seal of the court shall be issued to the guardian of the
18 person.

19 **SECTION 105.** 880.15 (title) of the statutes is renumbered 54.50 (1) (title).

20 **SECTION 106.** 880.15 (1) of the statutes is renumbered 54.50 (1) (b) and
21 amended to read:

22 54.50 (1) (b) *Appointment* Duration and extent of authority. ~~If, after~~
23 ~~consideration of a petition for temporary guardianship, the court finds that the~~
24 ~~welfare of a minor, spendthrift or an alleged incompetent requires the immediate~~
25 ~~appointment of a guardian of the person or of the estate, or of both, it~~ The court may

1 appoint a temporary guardian for a ward for a period not to exceed 60 days unless
2 further extended for 60 days by order of the court. The court may extend the period
3 only once, except that the court may extend this period for good cause shown for one
4 additional 60-day period. The court may impose no further temporary guardianship
5 on the ward for at least 90 days after the expiration of the temporary guardianship
6 and any extension. The court's determination and order appointing the temporary
7 guardian shall specify the authority of the temporary guardian and shall be limited
8 to those acts that are reasonably related to the reasons for appointment that are
9 specified in the petition for temporary guardianship. The authority of the temporary
10 guardian shall be is limited to the performance of duties respecting specific property,
11 ~~or to the performance of particular~~ those acts, as stated in the order of appointment.
12 All provisions of the statutes concerning the powers and duties of guardians shall
13 apply to temporary guardians except as limited by the order of appointment. The
14 temporary guardian shall make the reports the court directs and shall account to the
15 court upon termination of authority. The court assigned to exercise jurisdiction
16 under chs. 48 and 938 has exclusive jurisdiction over the appointment of a temporary
17 guardian of a minor for medical purposes but shall proceed in accordance with this
18 section Unless the court first specifically approves and orders bond, the temporary
19 guardian may not sell real estate or expend an amount in excess of \$2,000.

20 **SECTION 107.** 880.15 (1m) of the statutes is repealed.

21 **SECTION 108.** 880.15 (1s) of the statutes is renumbered 54.38 (6) and amended
22 to read:

23 54.38 (6) NOTICE OF PETITION AND HEARING FOR TEMPORARY GUARDIANSHIP. The
24 ~~person petitioning~~ petitioner for appointment of a temporary guardian shall cause
25 ~~give notice to be given under s. 880.08 of that~~ the petition to the minor, spendthrift

1 ~~or alleged incompetent and, if the appointment is made, shall give notice of the~~
2 ~~appointment to the ward. The time limits of s. 880.08 do not apply to notice given~~
3 ~~under this subsection~~ proposed ward. The notice shall be served before or at the time
4 the petition is filed or as soon thereafter as possible and shall include notice of the
5 right to counsel and of the right to petition for reconsideration or modification of the
6 temporary guardianship at any time under s. 880.34 within 30 days of receipt of the
7 notice 54.50 (1) (c) 4. The petitioner shall serve notice of the order for hearing on the
8 proposed ward before the hearing or not later than 3 calendar days after the hearing.
9 If the petitioner serves notice after the hearing is conducted and the court has
10 entered an order, the petitioner shall include the court's order with the notice of the
11 order for hearing.

***NOTE: As requested, I retained s. 880.15 (1s), stats., and replaced the former language of s. 54.50 (1) (c) 2. with it. I added to it the language you had requested for a redraft of s. 54.50 (1) (c) 2., however. Rather than placing this in s. 54.50 (1) (c), I have put it in s. 54.38, the notice section. Please review.

12 **SECTION 109.** 880.15 (2) of the statutes is repealed.

13 **SECTION 110.** 880.15 (3) of the statutes is renumbered 54.50 (1) (d) and
14 amended to read:

15 54.50 (1) (d) *Cessation of powers.* ~~If the temporary guardianship is not sooner~~
16 ~~terminated the~~ The duties and powers of the temporary guardian shall cease upon
17 ~~the issuing of letters of permanent guardianship to the guardian of the ward, or, if~~
18 ~~the ward is a minor, upon his becoming of age, or when it shall be judicially~~
19 ~~determined~~ expiration of the time period, or extension of the time period, specified
20 in sub. (1) (b), or if the court sooner determines that any other disability of the
21 ~~temporary ward which~~ situation of the ward that was the cause of the temporary
22 guardianship has terminated. Upon the termination of the temporary guardian's
23 duties and powers, a temporary guardian of the person shall file with the court any

1 report that the court requires. A temporary guardian of the estate shall, upon the
2 ~~termination of duties and powers~~, account to the court and deliver to the person or
3 ~~persons entitled to them all the estate of the ward in his or her hands~~ the ward's
4 estate over which the temporary guardian of the estate has had control. Any action
5 ~~which that~~ has been commenced by the temporary guardian may be prosecuted to
6 final judgment by the successor or successors in interest, if any.

****NOTE: Please review this paragraph to ensure that it meets your intent.

7 SECTION 111. 880.17 of the statutes is renumbered 54.54.

8 SECTION 112. 880.173 (title) of the statutes is repealed.

9 SECTION 113. 880.173 (1) of the statutes is renumbered 54.20 (2) (h) and
10 amended to read:

11 54.20 (2) (h) ~~A guardian of the estate appointed under this chapter for a~~
12 ~~married person may exercise with the approval of the court, except as limited under~~
13 ~~s. 880.37, any management and control right over the marital property or property~~
14 ~~other than marital property and any right in the business affairs which the married~~
15 ~~person could exercise under ch. 766 if the person were not determined under s. 880.12~~
16 ~~to be a proper subject for guardianship. Under this section, a guardian may consent~~
17 ~~to act together in or join in any transaction for which consent or joinder of both~~
18 ~~spouses is required or may execute~~ Execute under s. 766.58 a marital property
19 agreement with the other ward's spouse or intended spouse, but may not make,
20 amend or revoke a will.

****NOTE: I understand that, because of the creation of s. 54.21, s. 54.20 (2) (h) is
not intended to overrule any of the court's interpretation of s. 880.173 in *The*
Guardianship of F.E.H., 154 Wis.2d 576 (1990).

21 SECTION 114. 880.173 (2) of the statutes is repealed.

22 SECTION 115. 880.175 (title) of the statutes is repealed.

1 **SECTION 116.** 880.175 of the statutes is renumbered 54.20 (2) (b) and amended
2 to read:

3 54.20 (2) (b) ~~Upon petition by the guardian, a parent, the spouse, any issue or~~
4 ~~next of kin of any person, assets of the person may, in the discretion of the court and~~
5 ~~upon its order, after such notice as the court may require, be transferred~~ Transfer
6 assets of the ward to the trustee ~~or trustees of an~~ any existing revocable living trust
7 ~~created by the person for the benefit of~~ that the ward has created for himself or
8 ~~herself and those dependent upon the person for support~~ any dependents, or, if the
9 ward is a minor, to the trustee or trustees of a any trust created for the exclusive
10 benefit of the person, if a minor, which ward that distributes to him or her at age 18
11 or 21, or, if the ward dies before age 18 or 21, to his or her estate, or as he or she
12 appoints if he or she dies prior to age 18 or 21 the ward has appointed by a written
13 instrument that is executed after the ward attains age 14.

****NOTE: Is this provision now worded as you intend?

14 **SECTION 117.** 880.18 (title) of the statutes is renumbered 54.60 (title).

15 **SECTION 118.** 880.18 of the statutes is renumbered 54.60 (1) and amended to
16 read:

17 54.60 (1) INVENTORY REQUIRED. ~~When a~~ The guardian of the estate has been
18 appointed an inventory shall be made in the same manner and subject to the same
19 requirements as are provided for the inventory of a decedent's estate. ~~An appraisal~~
20 ~~of all or any part of the ward's estate shall be made when ordered by the court~~ prepare
21 an inventory that lists all of the ward's property and interests in property, including
22 any marital property interest, regardless of how the asset is titled.

23 **SECTION 119.** 880.19 (title) of the statutes is repealed.

24 **SECTION 120.** 880.19 (1) (title) of the statutes is repealed.

1 **SECTION 121.** 880.19 (1) of the statutes is renumbered 54.19 (1) and amended
2 to read:

3 54.19 (1) ~~The guardian of the estate shall take~~ Take possession of all of the
4 ward's real and personal property, and of any rents, income, issues, and benefits
5 ~~therefrom, whether accruing before or after the guardian's appointment from the~~
6 ~~property, and of the~~ any proceeds arising from the sale, mortgage, lease, or exchange
7 ~~thereof of the property and prepare an inventory of these.~~ Subject to such ~~this~~
8 possession, the title of all such ~~the~~ estate and to the increment and proceeds thereof
9 ~~shall be of the estate is~~ in the ward and not in the guardian. ~~It is the duty of the~~
10 ~~guardian of the estate to protect and preserve it, to retain, sell and invest it as~~
11 ~~hereinafter provided, to account for it faithfully, to perform all other duties required~~
12 ~~of the guardian by law and at the termination of the guardianship to deliver the~~
13 ~~assets of the ward to the persons entitled thereto.~~

14 **SECTION 122.** 880.19 (2) (title) of the statutes is repealed.

15 **SECTION 123.** 880.19 (2) (a) of the statutes is renumbered 54.20 (1) (intro.) and
16 amended to read:

17 54.20 (1) STANDARD. (intro.) ~~The~~ In exercising the powers under this section,
18 ~~the guardian of the estate may, without the approval of the court, retain any real or~~
19 ~~personal property possessed by the ward at the time of appointment of the guardian~~
20 ~~or subsequently acquired by the ward by gift or inheritance without regard to ch. 881,~~
21 ~~so long as such retention constitutes the exercise of~~ shall use the judgment and care
22 ~~under the circumstances then prevailing, which~~ that persons of prudence, discretion,
23 and intelligence exercise in the management of their own affairs, ~~not in regard to~~
24 ~~speculation but in regard to~~ including the permanent, rather than speculative,
25 ~~disposition of their funds, considering and consideration of~~ the probable income as

1 well as the ~~probable and~~ safety of their capital. In addition, in exercising powers and
2 duties under this section, the guardian of the estate shall consider, consistent with
3 the functional limitations of the ward, all of the following:

4 **SECTION 124.** 880.19 (2) (b) of the statutes is renumbered 54.20 (3) (g) and
5 amended to read:

6 54.20 (3) (g) ~~The guardian of the estate may, with the approval of the court,~~
7 ~~after such notice as the court directs, retain~~ Retain any real or personal property
8 ~~possessed by that the ward at the time of the appointment of the possesses when the~~
9 ~~guardian or subsequently acquired by~~ is appointed or that the ward acquires by gift
10 or inheritance for such period of time as shall be designated in the order of the court
11 ~~approving such retention, without regard to ch. 881 during the guardian's~~
12 appointment.

13 **SECTION 125.** 880.19 (3) (title) of the statutes is repealed.

14 **SECTION 126.** 880.19 (3) of the statutes is renumbered 54.20 (2) (L) and
15 amended to read:

16 54.20 (2) (L) In all cases where in which the court deems it determines that it
17 is advantageous to continue the business of a ward, ~~such business may be continued~~
18 ~~by the guardian of the estate on such~~ continue the business on any terms and
19 conditions as ~~may be~~ specified in the order of the court.

20 **SECTION 127.** 880.19 (4) (title) of the statutes is repealed.

21 **SECTION 128.** 880.19 (4) (a) of the statutes is renumbered 54.20 (3) (h) and
22 amended to read:

23 54.20 (3) (h) ~~The guardian of the estate may, without approval of the court,~~
24 ~~invest~~ Invest and reinvest the proceeds of sale of any guardianship assets of the ward

1 and any of the ward's other moneys in the guardian's possession in accordance with
2 ch. 881.

3 **SECTION 129.** 880.19 (4) (b) of the statutes is renumbered 54.20 (3) (i) and
4 amended to read:

5 54.20 (3) (i) ~~The guardian of the estate may, with the approval of the court, after~~
6 Notwithstanding ch. 881, after such notice as the court directs, and subject to ch. 786,
7 invest the proceeds of sale of any guardianship assets of the ward and any of the
8 ward's other moneys in the guardian's possession in ~~such~~ the real or personal
9 property ~~as the court determines that is determined by the court~~ to be in the best
10 interests of the guardianship estate, ~~without regard to ch. 881~~ of the ward.

11 **SECTION 130.** 880.19 (4) (c) of the statutes is renumbered 54.18 (3) (a) and
12 amended to read:

13 54.18 (3) (a) ~~No guardian shall lend guardianship~~ Lend funds of the ward to
14 himself or herself or, unless the court first approves the terms, rate of interest, and
15 any requirement for security, lend funds of the ward to another.

16 **SECTION 131.** 880.19 (5) (title) of the statutes is repealed.

17 **SECTION 132.** 880.19 (5) (a) of the statutes is renumbered 54.20 (3) (j) and
18 amended to read:

19 54.20 (3) (j) ~~The guardian of the estate may, without approval of the court, sell~~
20 Subject to ch. 786, sell any property of the guardianship estate of the ward that is
21 acquired by the guardian pursuant to sub. (4) under par. (h) or (i).

22 **SECTION 133.** 880.19 (5) (b) of the statutes is renumbered 54.22 and amended
23 to read:

24 **54.22** Petition for authority to sell, mortgage, pledge, lease, or
25 exchange ward's property. The court, on the application petition of the guardian

1 of the estate or of any other person interested in the estate of any a ward, after such
2 ~~notice if any, as~~ any notice that the court directs, may authorize or require the
3 guardian to sell, mortgage, pledge, lease, or exchange any property of the
4 guardianship estate of the ward upon such terms as the court may order, subject to
5 ch. 786, for the purpose of paying the ward's debts, providing for the ward's care,
6 maintenance, and education and the care, maintenance, and education of the ward's
7 dependents, investing the proceeds, or for any other purpose ~~which~~ that is in the best
8 interest of the ward.

****NOTE: I am repeating this NOTE because the response was somewhat unclear.
This provision appears to be in direct conflict with s. 54.19 (2), (3), and (4), each of which
require the guardian to act with respect to the ward's property in ways that are redundant
to this provision, but *without* requiring court approval. Which alternative do you prefer?
Is the issue related to a dollar value on the property, i.e., property over a value of, say,
\$100,000 would require court approval before the guardian may act? Or should either
this provision or s. 54.19 (2), (3), and (4) drop out?

9 **SECTION 134.** 880.19 (5) (c) of the statutes is renumbered 54.18 (3) (b) and
10 amended to read:

11 **54.18 (3) (b)** ~~No guardian shall purchase~~ Purchase property of the ward, unless
12 ~~sold at public sale except at fair market value, subject to ch. 786, and with the~~
13 ~~approval of the court, and then only if the guardian is a spouse, parent, child, brother~~
14 ~~or sister of the ward or is a cotenant with the ward in the property.~~

****NOTE: I corrected the numbering of the paragraphs under this subsection (I had
mistakenly renumbered par. (a) from s. 880.19 (4) (c) as s. 54.18 (3) (h), rather than s.
54.18 (3) (a)).

15 **SECTION 135.** 880.19 (5) (d) of the statutes is repealed.

16 **SECTION 136.** 880.19 (6) of the statutes is renumbered 54.23 and amended to
17 read:

18 **54.23 Trust Banks and trust companies, ~~exemption from investment~~**
19 **~~restraints.~~** ~~The limitations of this section~~ Nothing in this chapter relating to the
20 retention, sale, investment, or reinvestment of any asset shall not be applicable may

1 be interpreted to be inapplicable to any bank or trust company authorized to exercise
2 trust powers.

3 **SECTION 137.** 880.191 (1) of the statutes is renumbered 54.60 (7) and amended
4 to read:

5 54.60 (7) VERIFICATION, EXAMINATION IN COURT. Every guardian shall verify by
6 the guardian's oath that every inventory required of the guardian and verification
7 shall be to the effect that the inventory is true of includes all property which that
8 belongs to his or her decedent's estate or his or her ward, which has come to the estate
9 of the ward, in the guardian's possession or knowledge, and that upon diligent
10 inquiry the guardian has ~~not been able~~ unable to discover any property belonging to
11 the estate or ward which is not included therein that the inventory does not include.
12 The court, at the request of any party ~~interested,~~ or on its own motion, may examine
13 the guardian on oath ~~in relation thereto,~~ as to the inventory or ~~in relation to any~~
14 ~~supposed omission from the inventory.~~

15 **SECTION 138.** 880.192 of the statutes is repealed.

16 **SECTION 139.** 880.21 of the statutes is repealed.

17 **SECTION 140.** 880.215 of the statutes is renumbered 54.47 and amended to
18 read:

19 **54.47 Lis pendens, void contracts.** A certified copy of the petition and order
20 for hearing provided for in ss. 880.07 54.34 and 880.08 54.38 may be filed in the office
21 of the register of deeds for the county; ~~and if.~~ If a guardian shall be is appointed ~~upon~~
22 ~~such application~~ after a hearing on the petition, all contracts, except for necessities
23 at reasonable prices, and all gifts, sales, and transfers of property made by such
24 ~~insane or incompetent person or spendthrift,~~ the ward after the filing of a certified
25 copy of such petition and the order as aforesaid, shall be void. ~~The~~ are void, except

1 ~~that the~~ validity of a contract made by a person ward under a limited guardianship
2 is not void, ~~however,~~ unless the ~~determination is made by the court in its~~ court's order
3 ~~includes a finding under s. 880.33 (3) that the ward is incapable of exercising the~~
4 ~~power to~~ may not make contracts.

***NOTE: Have I amended this section as you intend?

5 **SECTION 141.** 880.22 (title) of the statutes is repealed.

6 **SECTION 142.** 880.22 (1) (title) of the statutes is repealed.

7 **SECTION 143.** 880.22 (1) of the statutes is renumbered 54.19 (7) and amended
8 to read:

9 54.19 (7) ~~Every general guardian shall~~ With respect to claims, pay the just
10 legally enforceable debts of the ward ~~out of~~ from the ward's personal estate and the
11 income of the ward's real estate, if sufficient, and if not, then ~~out of the ward's real~~
12 ~~estate upon selling the same as provided by law. But a temporary guardian shall pay~~
13 ~~the debts of his or her ward only on order of the court.~~

14 **SECTION 144.** 880.22 (2) (title) of the statutes is repealed.

15 **SECTION 145.** 880.22 (2) of the statutes is renumbered 54.20 (2) (m) and
16 amended to read:

17 54.20 (2) (m) ~~The guardian or a creditor of any ward may apply~~ Apply to the
18 court for adjustment of any claims against the ward incurred ~~prior to~~ before entry
19 of the order appointing the guardian or the filing of a lis pendens as provided in s.
20 ~~880.215~~ 54.47. The court shall by order fix the time and place it will adjust claims
21 and the time within which all claims ~~must~~ shall be presented ~~or be barred~~. Notice
22 ~~of the time and place so fixed and limited~~ these times and the place shall be given by
23 publication as ~~in estates of decedents; and all statutes relating to claims against and~~
24 ~~in favor of estates of decedents~~ provided in s. 879.05 (4), and ch. 859 generally shall

1 apply. ~~As in the settlement of estates of deceased persons, after~~ After the court has
2 made the order, no action or proceeding may be commenced or maintained in any
3 court against the ward upon any claim ~~of over~~ which the circuit court has jurisdiction.

4 **SECTION 146.** 880.23 (title) of the statutes is repealed.

5 **SECTION 147.** 880.23 of the statutes is renumbered 54.20 (3) (k) and amended
6 to read:

7 54.20 (3) (k) ~~The guardian shall settle~~ Settle all accounts of the ward and may
8 demand, sue for, collect and receive all debts and claims for damages due him or her,
9 or may, with the approval of the circuit court, compound and discharge the same, and
10 shall appear for and represent ~~his or her~~ the ward in all actions and proceedings
11 except where those for which another person is appointed ~~for that purpose~~.

12 **SECTION 148.** 880.24 (title) of the statutes is repealed.

13 **SECTION 149.** 880.24 (1) of the statutes is repealed.

14 **SECTION 150.** 880.24 (2) of the statutes is renumbered 54.42 (4) and amended
15 to read:

16 54.42 (4) ~~WARD'S~~ RIGHT TO PAYMENT OF EXPENSES IN TO CONTEST PROCEEDINGS.
17 ~~When~~ If a guardian is appointed the court may allow reasonable expenses incurred
18 by the ward in contesting the appointment.

19 **SECTION 151.** 880.24 (3) (title) of the statutes is renumbered 54.46 (4) (title) and
20 amended to read:

21 54.46 (4) (title) ~~FEES AND COSTS OF PETITIONER.~~

22 **SECTION 152.** 880.24 (3) (a) (intro.) of the statutes is renumbered 54.46 (4) (a)
23 (intro.) and amended to read:

24 54.46 (4) (a) Petitioner's attorney fees and costs. (intro.) Except as provided in
25 par. (b), ~~when~~ if a guardian is appointed, the court shall award from the ward's estate

1 payment of the petitioner's reasonable attorney fees and costs, including those fees
2 and costs, if any, related to protective placement of the ward, unless the court finds,
3 after considering all of the following, that it would be inequitable to do so:

****NOTE: In the Legislative Council draft WLC: 0220/P1, "including those fees and costs, if any, related to protective placement of the ward" is stricken. Do you wish to also strike that language in this draft?

****NOTE: I did not eliminate "Except as provided in par. (b)" from this paragraph, as requested, because the new paragraph (b) (formerly numbered s. 54.32, renumbered from s. 880.33 (2) (a) 3., stats.) (guardian ad litem and defense fees for indigents; liability) seems to be a clear exception to paragraph (a).

4 **SECTION 153.** 880.24 (3) (a) 1. to 3. of the statutes are renumbered 54.46 (4) (a)
5 1. to 3.

6 **SECTION 154.** 880.24 (3) (a) 4. of the statutes is renumbered 54.46 (4) (a) 5.

7 **SECTION 155.** 880.24 (3) (b) of the statutes is renumbered 54.46 (4) (a) 4. and
8 amended to read:

9 54.46 (4) (a) 4. ~~If the court finds that~~ Whether the ward had executed a durable
10 power of attorney under s. 243.07 or a power of attorney for health care under s.
11 155.05 or had engaged in other advance planning to avoid guardianship, ~~the court~~
12 ~~may not make the award specified in par. (a).~~

13 **SECTION 156.** 880.245 of the statutes is renumbered 54.62 (6) and amended to
14 read:

15 54.62 (6) ACCOUNTING BY AGENT THIRD PARTIES TO GUARDIAN. ~~The circuit court,~~
16 ~~upon the application of any~~ If a guardian appointed by it a court so requests, the court
17 ~~may order any person who has been entrusted by the guardian with any part of the~~
18 ~~estate~~ income or assets of a decedent or ward to appear before the court, and ~~may~~
19 ~~require the person to render a full account, on oath, of any property or papers~~
20 ~~belonging to the estate which have come to the person's possession~~ the income or
21 assets and of his or her proceedings thereon action regarding the income or assets.

1 If the person refuses to appear and render an account, the court may proceed against
2 him or her as for contempt.

****NOTE: I think current law refers to "decendent or ward" because of the way s. 54.64 (1) is worded (guardianship continues during life of ward, etc.). I eliminated "decendent," but I'm unsure if that's the right decision.

****NOTE: There is no definition of "estate" or of "property" in ch. 880, stats., and I would defer to your judgment as to whether the terms include both assets and income. I have in this subsection changed all references to "estate" or "property" to "income or assets." Do you want me to define "estate" for ch. 54 as including income and assets?

3 **SECTION 157.** 880.25 (title) of the statutes is repealed.

4 **SECTION 158.** 880.25 (1) of the statutes is renumbered 54.62 (1) and amended
5 to read:

6 54.62 (1) ANNUAL REPORTS. Every Except as provided in sub. (3) or unless
7 waived by a court, every guardian, except including a corporate guardian, shall, prior
8 to April 15 of each year, file an account under oath specifying that specifies the
9 amount of property received and held or invested by the guardian, the nature and
10 manner of the investment, and the guardian's receipts and expenditures during the
11 preceding calendar year. When ordered by the court, The court may order the
12 guardian shall within 30 days to render and file, within 30 days, a like account for
13 any shorter term less than a year. In lieu of the filing of these accounts before April
14 15 of each year, the court may, by appropriate order upon motion of the guardian,
15 direct the guardian of an estate to thereafter render and file the annual accountings
16 within 60 days after the anniversary date of the guardian's qualification as guardian,
17 with the accounting period from the anniversary date of qualification to the ensuing
18 annual anniversary date. ~~When any guardian of a minor has custody of the ward and~~
19 ~~the care of the ward's education, the guardian's report shall state the time that the~~
20 ~~ward attended school during the time for which the account is rendered and the name~~
21 ~~of the school.~~ The guardian shall also report any change in the status of the surety

1 upon the guardian's bond. If the court determines it to be in the ward's best interests,
2 the court may specify the persons to whom the guardian shall distribute copies of the
3 account.

4 **SECTION 159.** 880.25 (2) of the statutes is renumbered 54.62 (2) and amended
5 to read:

6 54.62 (2) DISPLAY OF ASSETS. Upon rendering the account the guardian shall
7 produce for examination by the court, or ~~some~~ by a person satisfactory to the court,
8 evidence of all of the ward's securities, evidences of deposit depository accounts, and
9 other investments reported, which shall be described in the account in sufficient
10 detail so that they may be readily identified. ~~It shall be ascertained~~ The court or
11 person satisfactory to the court shall ascertain whether the evidence of securities,
12 ~~evidences of deposit depository accounts, and other~~ investments correspond with the
13 account.

****NOTE: I replaced the term "deposit" with "depository accounts," and defined that term in s. 54.01 (5) using the definition in s. 815.18 (2) (e), stats. Is this the meaning you intended? I also added "of the ward's" in the first sentence; it's unnecessary to add it to the second, because the referent "the evidence of ... etc." suffices.

14 **SECTION 160.** 880.25 (3) of the statutes is renumbered 54.66 (2) and amended
15 to read:

16 54.66 (2) SMALL ESTATES. ~~When the whole estate of a ward or of several wards~~
17 ~~jointly, under the same guardianship, does not exceed \$1,000 in value, the~~ The
18 ~~guardian shall be required to render~~ of a ward with a small estate, as specified in s.
19 54.62 (3) (a), need not file a final account only upon the termination of the guardian's
20 guardianship, unless otherwise ordered by the court. The guardian shall instead
21 provide the court with a list of the ward's assets that remain at the time the
22 guardianship terminates, including at the death of the ward.

1 **SECTION 161.** 880.25 (4) of the statutes is renumbered 54.62 (5) and amended
2 to read:

3 **54.62 (5) EXAMINATION OF ACCOUNTS.** The account shall be promptly examined
4 ~~under the court's direction and if it as the court directs. If the account is not~~
5 ~~satisfactory it shall be examined on 8 days' notice and, the court shall make such~~
6 ~~order thereon~~ order action as justice requires. ~~Notice~~ and shall direct that notice be
7 provided to the guardian ~~may be served personally or by certified mail as the court~~
8 ~~directs. When the examination of a guardian's account is upon notice. If notice is~~
9 provided to the guardian under this subsection, the court may appoint a guardian
10 ad litem of for the ward may be appointed.

11 **SECTION 162.** 880.25 (5) of the statutes is renumbered 54.62 (7) (intro.) and
12 amended to read:

13 **54.62 (7) NOTICE OF FINAL ACTION ON AN ACCOUNT.** (intro.) No action by the court
14 ~~upon any on an account shall be is final unless it is upon the guardian first provides~~
15 ~~notice. to all of the following:~~

16 **SECTION 163.** 880.251 of the statutes is repealed.

17 **SECTION 164.** 880.26 (title) of the statutes is repealed.

18 **SECTION 165.** 880.26 (1) (intro.) of the statutes is renumbered 54.64 (3) (intro.)
19 and amended to read:

20 **54.64 (3) GUARDIANSHIP TERMINATION OF GUARDIANSHIP OF THE PERSON.** (intro.)
21 A guardianship of the person shall terminate ~~when~~ if any of the following occurs:

22 **SECTION 166.** 880.26 (1) (a) of the statutes is renumbered 54.64 (3) (c) and
23 amended to read:

24 **54.64 (3) (c)** A formerly minor ward attains ~~his or her majority, unless the minor~~
25 is incompetent age 18.

****NOTE: The provision changes current law, which appears to continue a guardianship without other action when a minor, incompetent ward reaches age 18. Just to be sure, are you intending that an incompetent minor's guardianship of the person terminate when he or she reaches 18 and that the guardianship be re-petitioned, etc.?

1 **SECTION 167.** 880.26 (1) (b) of the statutes is renumbered 54.64 (3) (d) and
2 amended to read:

3 54.64 (3) (d) A minor ward lawfully marries.

****NOTE: What if the minor is incompetent? (See ****NOTE under par. (c))?

4 **SECTION 168.** 880.26 (1) (c) of the statutes is renumbered 54.64 (3) (a) and
5 amended to read:

6 54.64 (3) (a) The court adjudicates a former ward who was formerly found to
7 be incompetent to be competent no longer incompetent or a ward who was formerly
8 found to be a spendthrift to be capable of handling his or her property.

9 **SECTION 169.** 880.26 (2) (intro.) of the statutes is renumbered 54.64 (4) (intro.)
10 and amended to read:

11 54.64 (4) GUARDIANSHIP TERMINATION OF GUARDIANSHIP OF THE ESTATE. (intro.)
12 A guardianship of the estate shall terminate ~~when~~ if any of the following occurs:

13 **SECTION 170.** 880.26 (2) (a) of the statutes is renumbered 54.64 (4) (c) and
14 amended to read:

15 54.64 (4) (c) A formerly minor ward attains ~~his or her majority~~ age 18.

****NOTE: Please see the ****NOTE under s. 54.64 (3) (c).

16 **SECTION 171.** 880.26 (2) (b) of the statutes is renumbered.

****NOTE: Please see the ****NOTE under s. 54.64 (3) (d).

17 **SECTION 172.** 880.26 (2) (c) of the statutes is renumbered 54.64 (4) (a) and
18 amended to read:

1 54.64 (4) (a) The court adjudicates a former ward who was formerly found to
2 be incompetent or a spendthrift to be no longer incompetent or a ward who was
3 formerly found to be a spendthrift to be capable of handling his or her property.

4 **SECTION 173.** 880.26 (2) (d) of the statutes is renumbered 54.64 (4) (e) and
5 amended to read:

6 54.64 (4) (e) A ward dies, except when the estate can be settled as provided by
7 s. 880.28 54.66 (4).

 ****NOTE: Have I drafted this paragraph as you wish? If s. 54.66 (4) applies, would
the court just terminate the guardianship after the summary settlement, or do we need
to provide specific authority for the court to do that?

8 **SECTION 174.** 880.26 (3) of the statutes is renumbered 54.64 (5) (intro.) and
9 amended to read:

10 54.64 (5) ~~DEPLETED GUARDIANSHIPS~~ GUARDIANSHIP (intro.) ~~When the~~ If a court
11 determines that the estate of ~~the~~ a ward is below \$5,000 and reduced to a point where
12 it is to the advantage of the ward to dispense with the guardianship, the court may
13 terminate do one of the following:

14 (a) Terminate the guardianship and authorize order disposition of the
15 remaining assets as provided by s. 880.04 (2) 54.12 (1). The court, as a part of the
16 disposition, may order ~~a suitable amount paid to the county treasurer under order~~
17 ~~of the court or reserved in the guardianship to assure the ward a decent burial, a~~
18 ~~marker and care for the grave. In the case of an insolvent guardianship, the court~~
19 ~~may order an amount not exceeding \$400 reserved in the guardianship or paid to the~~
20 ~~county treasurer under order of the court to assure the ward a decent burial~~ the
21 guardian to make appropriate financial arrangements for the burial or other
22 disposition of the remains of the ward.

1 **SECTION 175.** 880.27 of the statutes is renumbered 54.66 (1) and amended to
2 read:

3 54.66 (1) ~~SETTLEMENT OF ACCOUNTS~~ RENDER FINAL ACCOUNT. Upon termination
4 of ~~If a court terminates~~ a guardianship, or ~~upon resignation, removal or death of a~~
5 guardian, ~~such resigns, is removed, or dies, the~~ guardian or the guardian's personal
6 representative shall ~~forthwith~~ promptly render the guardian's a final account to the
7 court and to the former ward, the successor guardian, or the deceased ward's
8 personal representative as the case may be. ~~Upon approval of the account and filing~~
9 ~~proper receipts the guardian shall be discharged and the guardian's bond released~~
10 ~~or special administrator, as appropriate. If the ward dies and the guardian and the~~
11 ~~deceased ward's personal representative or special administrator are the same~~
12 ~~person, the deceased ward's personal representative or special administrator shall~~
13 ~~give notice of the termination and rendering of the final account to all interested~~
14 ~~persons of the ward's estate.~~

15 **SECTION 176.** 880.28 of the statutes is renumbered 54.66 (4) and amended to
16 read:

17 54.66 (4) SUMMARY SETTLEMENT OF SMALL ESTATES. ~~When~~ If a ward dies leaving
18 an estate ~~which~~ that can be settled summarily under s. 867.01, the court may
19 approve such the settlement and distribution by the guardian, without the necessity
20 of appointing a personal representative.

21 **SECTION 177.** 880.31 (title) of the statutes is repealed.

22 **SECTION 178.** 880.31 (1) and (7) of the statutes are consolidated, renumbered
23 54.76 (1) and amended to read:

24 54.76 (1) Any adult resident who is unwilling or believes that he or she is
25 unable properly to manage his or her property or income may voluntarily apply to

1 the circuit court of the county of his or her residence for appointment of a conservator
2 of the estate. Upon receipt of the application, the court shall fix a time and place for
3 hearing the application and may direct to whom, including presumptive heirs, and
4 in what manner notice of the hearing shall be given. ~~(7) If an application for~~
5 ~~conservatorship is filed, the~~ to a potential recipient of the notice, unless the potential
6 recipient has waived receipt. The fee prescribed in s. 814.66 (1) (b) shall be paid at
7 the time of the filing of the inventory or other documents setting forth the value of
8 the estate.

****NOTE: Should anyone in addition to presumptive heirs be specified in s. 54.76
(1)? (See distribution of notice under s. 54.76 (4)). Should any of this be in s. 54.38? Note
that I did not draft "adult" — shouldn't all heirs receive notice (see, for example, s. 54.76
(4))?

9 **SECTION 179.** 880.31 (2) of the statutes is renumbered 54.76 (2) and amended
10 to read:

11 **54.76 (2)** ~~At the time of such hearing for appointment of a conservator, the~~
12 ~~applicant shall be personally examined by the court and if the court is satisfied that~~
13 ~~the applicant desires a conservator and that the fiduciary nominated is suitable, the~~
14 ~~court may appoint the nominee as conservator and issue letters of conservatorship~~
15 ~~to the nominee upon the filing of a bond in the amount fixed by the court.~~

16 **SECTION 180.** 880.31 (3) of the statutes is renumbered 54.76 (3) and amended
17 to read:

18 **54.76 (3)** A conservator ~~shall have~~ has all the powers and duties of a guardian
19 ~~of the property of an incompetent person. The conservator's powers shall cease upon~~
20 ~~being removed by the court or upon death of the person whose estate is being~~
21 ~~conserved estate. An individual whose estate is under conservatorship may make~~
22 gifts of his or her estate, subject to approval of the conservator.

****NOTE: Please review the gifting language carefully, in light of the actual factual situation and holding of *Zobel v. Fenendael*.

1 **SECTION 181.** 880.31 (4) and (5) of the statutes are consolidated, renumbered
2 54.76 (4) and amended to read:

3 54.76 (4) Any person, including an individual whose estate is under
4 conservatorship, may apply to the court at any time for termination ~~thereof~~ of the
5 conservatorship. Upon ~~such~~ receipt of the application, the court shall fix a time and
6 place for hearing and may direct that 10 days' notice by mail be given to the person's
7 individual's guardian, if any, of the person or agent under a power of attorney for
8 health care the conservator, and the presumptive heirs of the applicant. ~~Upon such~~
9 individual whose estate is under conservatorship. A potential recipient of the notice
10 may waive its receipt. At the hearing, the court shall, unless it is clearly shown that
11 the applicant individual whose estate is under conservatorship is incompetent,
12 remove the conservator and order the property restored to the applicant, ~~or if the~~
13 ~~applicant so desires and the nominee is suitable, the court may appoint a successor~~
14 ~~conservator.~~ ~~(5) individual.~~ If the court shall ~~upon such hearing determine~~
15 determines at the hearing that the person individual whose estate is administered
16 by a conservator ~~may be~~ is incapable of handling his or her estate, the court shall
17 order the conservatorship continued, ~~or, if the applicant so desires and the a nominee~~
18 is suitable, ~~the court may appoint a successor conservator. A conservatorship may~~
19 only be terminated under a hearing under this subsection.

20 **SECTION 182.** 880.31 (6) of the statutes is renumbered 54.76 (5) and amended
21 to read:

1 54.76 (5) Appointment of a conservator ~~shall not be~~ does not constitute
2 evidence of the competency or incompetency of the person whose estate is being
3 administered.

4 **SECTION 183.** 880.33 (1) of the statutes is renumbered 54.36 and amended to
5 read:

6 **54.36 Examination of proposed ward.** Whenever it is proposed to appoint
7 a guardian on the ground of a proposed ward's alleged incompetency, a licensed
8 physician or licensed psychologist, or both, shall furnish a written statement
9 concerning ~~the mental condition~~ any incapacity of the proposed ward, based upon
10 examination. The privilege under s. 905.04 ~~shall~~ does not apply to ~~this the~~
11 statement. ~~A The petitioner shall provide a copy of the statement shall be provided~~
12 to the proposed ward, or his or her counsel, the guardian ad litem, and the
13 petitioner's attorney, if any. Prior to the examination, ~~under this subsection, of a~~
14 ~~person alleged to be not competent to refuse psychotropic medication under s. 880.07~~
15 ~~(1m), the person~~ the proposed ward shall be informed that ~~his or her statements~~
16 made by the proposed ward may be used as a basis for a finding of incompetency ~~and~~
17 ~~an order for protective services, including psychotropic medication.~~ The person shall
18 also be informed that he or she has a right to ~~remain silent~~ refuse to participate in
19 the examination or speak to the examiner and that the examiner is required to report
20 to the court even if the person ~~remains silent~~ does not speak to the examiner. The
21 issuance of such a warning to the person prior to each examination establishes a
22 presumption that the person understands that he or she need not speak to the
23 examiner. Nothing in this section prohibits the use of a report by a physician or
24 psychologist that is based on an examination of the proposed ward by the physician
25 or psychologist before filing the petition for appointment of a guardian, but the court

1 will consider the recency of the report in determining whether the report sufficiently
2 describes the proposed ward's current state and in determining the weight to be
3 given to the report.

****NOTE: Who informs the proposed ward that his or her statements may be used
as a basis for a finding of incompetency? The petitioner? Other?

****NOTE: Please review this changed language to make sure I've now captured
your intent.

4 **SECTION 184.** 880.33 (2) (a) 1. of the statutes is renumbered 54.42 (1) (a) (intro.)
5 and amended to read:

6 54.42 (1) (a) (intro.) The proposed ward has the right to counsel ~~whether or not~~
7 ~~present at the hearing on determination of competency. The court shall in all cases~~
8 ~~require the appointment of an attorney as guardian ad litem in accordance with s.~~
9 ~~757.48 (1) and shall in addition require representation by full legal counsel whenever~~
10 ~~the petition contains the allegations under s. 880.07 (1m) or if, at least 72 hours~~
11 ~~before the hearing, the alleged incompetent requests; the guardian ad litem or any~~
12 ~~other person states that the alleged incompetent is opposed to the guardianship~~
13 ~~petition; or the court determines that the interests of justice require it. The proposed~~
14 ~~ward has the right to a trial by a jury if demanded by the proposed ward, attorney~~
15 ~~or guardian ad litem, except that if the petition contains the allegations under s.~~
16 ~~880.07 (1m) and if notice of the time set for the hearing has previously been provided~~
17 ~~to the proposed ward and his or her counsel, a jury trial is deemed waived unless~~
18 ~~demanded at least 48 hours prior to the time set for the hearing. The number of~~
19 ~~jurors shall be determined under s. 756.06 (2) (b). The proposed ward, attorney or~~
20 ~~guardian ad litem shall have the right to present and cross-examine witnesses,~~
21 ~~including the physician or psychologist reporting to the court under sub. (1). The~~
22 ~~attorney or guardian ad litem for the proposed ward shall be provided with a copy~~

1 of the report of the physician or psychologist at least 96 hours in advance of the
2 hearing. Any final decision of the court is subject to the right of appeal. if any of the
3 following occurs:

4 **SECTION 185.** 880.33 (2) (a) 2. of the statutes is renumbered 54.42 (1) (c) and
5 amended to read:

6 54.42 (1) (c) ~~If the person requests but is par. (a) 1., 2., or 3. applies but the~~
7 ~~proposed ward is~~ unable to obtain legal counsel, the court shall appoint legal counsel.
8 ~~If the person is represented by counsel appointed under s. 977.08 in a proceeding for~~
9 ~~a protective placement under s. 55.06 or for the appointment of a guardian under s.~~
10 ~~880.07 (1m), the court shall order the counsel appointed under s. 977.08 to represent~~
11 ~~the person.~~

12 **SECTION 186.** 880.33 (2) (a) 3. of the statutes is renumbered 54.46 (4) (b) and
13 amended to read:

14 54.46 (4) (b) *Guardian ad litem and defense fees for indigents; liability.* If the
15 ~~person~~ proposed ward is an adult who is indigent, the county of legal settlement shall
16 be in which venue lies for the guardianship proceeding is the county liable for any
17 fees due the guardian ad litem and, if counsel was not appointed under s. 977.08, for
18 any legal fees due the ~~person's~~ proposed ward's legal counsel. ~~If the person is a minor,~~
19 ~~the person's parents or the county of legal settlement shall be liable for any fees due~~
20 ~~the guardian ad litem as provided in s. 48.235 (8).~~

21 **SECTION 187.** 880.33 (2) (b) of the statutes is renumbered 54.42 (3).

22 **SECTION 188.** 880.33 (2) (d) of the statutes is repealed.

23 **SECTION 189.** 880.33 (2) (e) of the statutes is renumbered 54.44 (5) and
24 amended to read:

1 54.44 (5) PRIVACY OF HEARING. Every hearing ~~on a petition under s. 880.07 (1m)~~
2 under this chapter shall be ~~open~~ closed, unless the proposed ward or his or her
3 attorney acting with the proposed ward's consent moves that it be ~~closed~~ open. If the
4 hearing is closed, only ~~persons in interest, including representatives of providers of~~
5 ~~service and~~ interested persons, their attorneys, and witnesses, may be present.

 ***NOTE: I deleted "representatives of providers of service" from this subsection
because they are not included in the definition of "interested person" under s. 54.01 (12).

6 **SECTION 190.** 880.33 (4m) and (4r) of the statutes are repealed.

7 **SECTION 191.** 880.33 (5) of the statutes is renumbered 54.15 (1) and amended
8 to read:

9 54.15 (1) OPINIONS OF PROPOSED WARD AND FAMILY. ~~In appointing a guardian, the~~
10 The court shall take into consideration the opinions of the ~~alleged incompetent~~
11 ~~proposed ward~~ and of the members of the his or her family as to what is in the best
12 interests of the proposed ~~incompetent~~ ward. However, the best interests of the
13 proposed ~~incompetent~~ ward shall control in making the determination when the
14 opinions of the family are in conflict with the ~~clearly appropriate decision~~ those best
15 interests. The court shall also consider potential conflicts of interest resulting from
16 the prospective guardian's employment or other potential conflicts of interest. ~~If the~~
17 ~~proposed incompetent has executed a power of attorney for health care under ch. 155,~~
18 ~~the court shall give consideration to the appointment of the health care agent for the~~
19 ~~individual as the individual's guardian.~~

20 **SECTION 192.** 880.33 (5m) of the statutes is renumbered 54.15 (9) and amended
21 to read:

22 54.15 (9) LIMITATION ON NUMBER OF WARDS OF GUARDIAN. No person, except a
23 ~~nonprofit corporation approved by the department of health and family services~~

1 ~~under s. 880.35, who has individual may have~~ guardianship of the person of more
2 ~~than 5 or more adult wards who are~~ unrelated to the person ~~may accept appointment~~
3 individual, except that a court may, under circumstances that the court determines
4 are appropriate, waive this limitation to authorize appointment of the individual as
5 ~~guardian of the person of another adult ward unrelated to the person, unless~~
6 ~~approved by the department. No such person may accept appointment as guardian~~
7 ~~of no more than 10 such~~ an additional 5 adult wards who are unrelated to the person
8 individual. A corporation or entity that is approved by the department under sub.
9 (7) is not limited in the number of adult wards for which the corporation or entity may
10 accept appointment by a court as guardian.

11 **SECTION 193.** 880.33 (7) of the statutes is renumbered 54.48 and amended to
12 read:

13 **54.48 Protective placement and protective services.** A finding of
14 incompetency and appointment of a guardian under this subchapter chapter is not
15 grounds for involuntary protective placement. ~~Such or the provision of protective~~
16 services. Protective placement and the provision of protective services may be made
17 only in accordance with s. ~~55.06~~ ch. 55.

18 **SECTION 194.** 880.33 (8) (b) of the statutes is renumbered 54.46 (3) (b) and
19 amended to read:

20 **54.46 (3) (b) Power of attorney for health care.** If the proposed incompetent
21 ward has executed a power of attorney for health care under ch. 155, ~~find that the~~
22 ~~power of attorney for health care instrument should remain~~ remains in effect. ~~If the~~
23 ~~court so finds, the court shall so order and shall, except that the court may, only for~~
24 good cause shown, revoke the power of attorney for health care or limit the power of
25 ~~the guardian to make those health care decisions for the ward that are not to be made~~

1 ~~by the health care authority of the~~ agent under the terms of the power of attorney
2 for health care instrument, ~~unless the guardian is the health care agent under those~~
3 ~~terms.~~

****NOTE: This provision may require amending the health care power of attorney chapter, which will, if necessary, be done in a subsequent version.

4 **SECTION 195.** 880.331 (title) of the statutes is renumbered 54.40 (title) and
5 amended to read:

6 **54.40 (title) Guardian ad litem in incompetency cases; appointment;**
7 **duties; termination.**

8 **SECTION 196.** 880.331 (1) of the statutes is renumbered 54.40 (1) and amended
9 to read:

10 54.40 (1) APPOINTMENT. The court shall appoint a guardian ad litem whenever
11 it is proposed that the court appoint a guardian on the ground of incompetency under
12 s. 880.33, when a petition is brought under s. 54.34 to protectively place a person or
13 order protective services under s. 55.06, to review any protective placement or
14 protective service order under s. 55.06, or to terminate a protective placement under
15 s. 55.06, or at any other time that the court determines it is necessary.

16 **SECTION 197.** 880.331 (2) of the statutes is renumbered 54.40 (2) and amended
17 to read:

18 54.40 (2) QUALIFICATIONS. The guardian ad litem shall be an attorney admitted
19 to practice in this state. No person who is an interested party in a proceeding,
20 appears as counsel in a proceeding on behalf of any party, or is a relative or
21 representative of an interested party may be appointed guardian ad litem in that
22 proceeding or in any other proceeding that involves the same proposed ward.

****NOTE: Should "interested party" be changed to "interested person"?

1 **SECTION 198.** 880.331 (3) of the statutes is renumbered 54.40 (3) and amended
2 to read:

3 **54.40 (3) RESPONSIBILITIES.** The guardian ad litem shall be an advocate for the
4 best interests of the proposed ward ~~or alleged incompetent~~ as to guardianship,
5 protective placement, and protective services. The guardian ad litem shall function
6 independently, in the same manner as an attorney for a party to the action, and shall
7 consider, but ~~shall not be~~ is not bound by, the wishes of the proposed ward ~~or alleged~~
8 ~~incompetent~~ or the positions of others as to the best interests of the proposed ward
9 ~~or alleged incompetent~~. The guardian ad litem has none of the rights or duties of a
10 general guardian.

11 **SECTION 199.** 880.331 (4) (intro.) of the statutes is renumbered 54.40 (4)
12 (intro.).

13 **SECTION 200.** 880.331 (4) (a) of the statutes is renumbered 54.40 (4) (a) and
14 amended to read:

15 **54.40 (4) (a)** Interview the proposed ward ~~or alleged incompetent~~ and explain
16 the contents of the petition, the applicable hearing procedure, the right to counsel,
17 and the right to request or continue a limited guardianship.

18 **SECTION 201.** 880.331 (4) (b) of the statutes is renumbered 54.40 (4) (b) and
19 amended to read:

20 **54.40 (4) (b)** Advise the proposed ward ~~or alleged incompetent~~, both orally and
21 in writing, of that person's rights to be present at the hearing, to a jury trial, to an
22 appeal, to counsel, and to an independent medical or psychological examination on
23 the issue of competency, at county expense if the person is indigent.

24 **SECTION 202.** 880.331 (4) (c) of the statutes is renumbered 54.40 (4) (e) and
25 amended to read:

1 54.40 (4) (e) Request that the court order additional medical, psychological, or
2 other evaluation, if necessary.

3 **SECTION 203.** 880.331 (4) (d) of the statutes is renumbered 54.40 (4) (f) and
4 amended to read:

5 54.40 (4) (f) If applicable, inform the court and petitioner's attorney or, if none,
6 the petitioner that the proposed ward ~~or alleged incompetent~~ objects to a finding of
7 incompetency, the present or proposed placement, or the recommendation of the
8 guardian ad litem as to the proposed ward's ~~or alleged incompetent's~~ best interests
9 or that the proposed ward's ~~or alleged incompetent's~~ position on these matters is
10 ambiguous. If the guardian ad litem recommends that the hearing be held in a place
11 other than a courtroom, the guardian ad litem shall provide the information under
12 this paragraph as soon as possible.

13 **SECTION 204.** 880.331 (4) (e) of the statutes is renumbered 54.40 (4) (i) and
14 amended to read:

15 54.40 (4) (i) Present nontestamentary evidence concerning the best interests
16 of the proposed ward ~~or alleged incompetent~~, if necessary.

 ***NOTE: Does the term "nontestamentary" clarify sufficiently for your purposes
 that the GAL may not testify in the proceedings?

17 **SECTION 205.** 880.331 (4) (f) of the statutes is renumbered 54.40 (4) (j) and
18 amended to read:

19 54.40 (4) (j) Report to the court on any ~~other relevant~~ matter that the court
20 requests.

21 **SECTION 206.** 880.331 (5) (intro.) of the statutes is renumbered 54.70 (intro.)
22 and amended to read:

1 **54.70 Duties in of guardian ad litem for reviews.** (intro.) In any review
2 of a protective placement under s. 55.06 or of a protective ~~service~~ services order under
3 s. 55.05, the guardian ad litem shall do all of the following:

4 **SECTION 207.** 880.331 (5) (a) of the statutes is renumbered 54.70 (1) and
5 amended to read:

6 54.70 (1) Interview the ward to explain the review procedure, the right to an
7 independent evaluation, the right to counsel, and the right to a hearing.

8 **SECTION 208.** 880.331 (5) (b) of the statutes is renumbered 54.70 (2) and
9 amended to read:

10 54.70 (2) Provide the information under ~~par. (a)~~ sub. (1) to the ward in writing.

11 **SECTION 209.** 880.331 (5) (c) of the statutes is renumbered 54.70 (3) and
12 amended to read:

13 54.70 (3) Secure Request that the court order an additional medical,
14 psychological, or other evaluation of the ward, if necessary.

15 **SECTION 210.** 880.331 (5) (d) of the statutes is renumbered 54.70 (4).

16 **SECTION 211.** 880.331 (5) (e) of the statutes is renumbered 54.70 (5) and
17 amended to read:

18 54.70 (5) Review the ward's condition, placement, and rights with the
19 guardian.

20 **SECTION 212.** 880.331 (5) (f) of the statutes is renumbered 54.70 (6) and
21 amended to read:

22 54.70 (6) If relevant, report to the court that the ward objects to the finding of
23 continuing incompetency, the present or proposed placement, the position of the
24 guardian, or the recommendation of the guardian ad litem as to the best interests of
25 the ward or if there is ambiguity about the ward's position on these matters.

1 **SECTION 213.** 880.331 (5) (g) of the statutes is renumbered 54.70 (8).

2 **SECTION 214.** 880.331 (6) of the statutes is renumbered 54.40 (5) and amended
3 to read:

4 **54.40 (5) COMMUNICATION TO A JURY.** In jury trials under ch. 55 or 880, the court
5 or guardian ad litem may tell the jury that the guardian ad litem represents the
6 interests of the proposed ward ~~or alleged incompetent~~.

7 **SECTION 215.** 880.331 (7) of the statutes is renumbered 54.40 (6) and amended
8 to read:

9 **54.40 (6) TERMINATION AND EXTENSION OF APPOINTMENT.** The appointment of a
10 guardian ad litem under sub. (1) terminates upon the entry of the court's final order
11 or upon the termination of any appeal in which the guardian ad litem participates,
12 even if counsel has been appointed for the proposed ward ~~or alleged incompetent~~.
13 The court may extend that appointment, or reappoint a guardian ad litem whose
14 appointment under this section has terminated, by an order specifying the scope of
15 responsibilities of the guardian ad litem. At any time, the guardian ad litem, any
16 party, or the person individual for whom the appointment is made may request that
17 the court terminate any extension or reappointment. The guardian ad litem may
18 appeal, or may participate in an appeal ~~or may do neither~~. If an appeal is taken by
19 any party and the guardian ad litem chooses not to participate in that appeal, he or
20 she shall file with the appellate court a statement of reasons for not participating.
21 Irrespective of the guardian ad litem's decision not to participate in an appeal, the
22 appellate court may order the guardian ad litem to participate in the appeal.

23 **SECTION 216.** 880.331 (8) of the statutes is renumbered 54.74 and amended to
24 read:

1 **54.74 Compensation of guardian ad litem.** ~~On order of the court, the~~
2 ~~guardian ad litem appointed under this chapter shall be allowed reasonable~~
3 ~~compensation to be paid by the county of venue, unless Unless the court otherwise~~
4 ~~directs or unless the guardian ad litem is appointed for a minor, in which case the~~
5 ~~compensation of the guardian ad litem shall be paid by the minor's parents or the~~
6 ~~county of venue as provided in s. 48.235 (8), the court shall order reasonable~~
7 ~~compensation to be paid to a guardian ad litem appointed under s. 54.40 (1) from the~~
8 ~~ward's estate, if sufficient, or, if insufficient, by the county of venue.~~ If the court
9 orders a county to pay the compensation of the guardian ad litem, the amount
10 ordered may not exceed the compensation paid to a private attorneys attorney under
11 s. 977.08 (4m) (b). The guardian ad litem shall receive compensation for performing
12 all duties required under s. 54.40 (4) and for any other acts that are approved by the
13 court and are reasonably necessary to promote the ward's best interests.

14 **SECTION 217.** 880.34 (title) of the statutes is renumbered 54.64 (title) and
15 amended to read:

16 **54.64 (title) Duration Review and termination of guardianship; review.**

17 **SECTION 218.** 880.34 (1) of the statutes is renumbered 54.64 (1) and amended
18 to read:

19 **54.64 (1) DURATION.** Any guardianship of an individual found to be incompetent
20 under this chapter shall continue during the life of the incompetent, ~~or ward,~~ until
21 terminated by the court, or as provided under sub (3) or (4). Upon reaching the age
22 of majority, ~~an incompetent subject to guardianship under this chapter shall be~~
23 ~~reviewed by the court for the purpose of determining whether the guardianship~~
24 ~~should be continued or modified.~~ The court shall make a specific finding of any rights
25 ~~under s. 880.33 (3) which the individual is competent to exercise at the time.~~

1 **SECTION 219.** 880.34 (4) of the statutes is renumbered 54.64 (2) (a) (intro.) and
2 amended to read:

3 54.64 (2) (a) (intro.) A ward who is 18 years of age or older, any interested
4 person acting on the ward's behalf, or the ward's guardian may petition for a review
5 of incompetency. Upon such at any time after 180 days after any previous hearing
6 under s. 54.44, or at any time if the court determines that exigent circumstances,
7 including presentation of new evidence, require a review. If a petition for review is
8 filed, the court shall conduct do all of the following:

9 4. Conduct a hearing at which the ward ~~shall be~~ is present and ~~shall have~~ has
10 the right to a jury trial, if demanded. ~~The ward shall also have the right to counsel~~
11 ~~and the court shall appoint counsel if the ward is unable to obtain counsel. If the~~
12 ~~ward is indigent, counsel shall be provided at the expense of the ward's county of legal~~
13 ~~settlement.~~

14 **SECTION 220.** 880.34 (5) of the statutes is renumbered 54.64 (2) (c) and
15 amended to read:

16 54.64 (2) (c) After a hearing under ~~sub. (4) par. (a)~~ or on its own motion, a court
17 may terminate or modify ~~a the guardianship of an incompetent, including restoring~~
18 certain of the ward's rights.

19 **SECTION 221.** 880.34 (6) of the statutes is repealed.

20 **SECTION 222.** 880.35 of the statutes is renumbered 54.15 (7) and amended to
21 read:

22 54.15 (7) ~~NONPROFIT CORPORATION AS GUARDIAN~~ PRIVATE NONPROFIT CORPORATION
23 OR OTHER ENTITY. A private nonprofit corporation organized under ch. 181, 187, or 188
24 is qualified to act or any other nonprofit or for profit entity that is approved by the
25 court may be appointed as guardian of the person or of the property or both, of an

1 individual found to be in need of guardianship under s. 880.33, if a proposed ward,
2 if no suitable individual is available as guardian and the department of health and
3 family services, under rules established under ch. 55, finds the corporation or entity
4 to be a suitable agency to perform such duties.

****NOTE: In LRB-0039/P1, I asked for an example of a nonprofit entity that is not organized under ch. 181, 187, or 188, stats. Your answer was a partnership, LLC, trust, unincorporated association. Rob Marchant, our Business Associations drafter, has not heard of a non-profit LLC or partnership. Do you perhaps, instead, mean tax-exempt under 501c? Would you ever want a trust to be guardian of the person? If you are contemplating the possible appointment of all these, plus an unincorporated association as guardian, wouldn't it be simpler to refer to "person," (under the very broad meaning in s. 990.01 (26), stats.), instead?

****NOTE: Why does DHFS promulgate these rules under ch. 55, stats.? Why not under this chapter (formerly, ch. 880, stats.)?

5 SECTION 223. 880.36 (title) of the statutes is renumbered 54.52 (title).

6 SECTION 224. 880.36 (1) of the statutes is renumbered 54.52 (1) and amended
7 to read:

8 54.52 (1) A person may at any time bring a petition for the appointment of a
9 standby guardian of the person or property or both estate of a minor or person found
10 incompetent under s. 880.08 to assume the duty and authority of guardianship on
11 the death, incapacity or resignation of the initially appointed guardian may be
12 brought under this chapter at any time. A petition for the appointment of a standby
13 guardian of the person or property or both of a minor to assume the duty and
14 authority of guardianship on the incapacity, death, or debilitation and consent, of the
15 minor's parent shall be brought under s. 48.978 an individual who is determined
16 under s. 54.10 to be incompetent, a minor, or a spendthrift.

17 SECTION 225. 880.36 (2) of the statutes is renumbered 54.52 (2) and amended
18 to read:

19 54.52 (2) At any hearing conducted under this section the court may designate
20 one or more standby guardians of the person or property estate whose appointment

1 shall become effective immediately upon the death, ~~incapacity~~ inability, or
2 resignation of the initially appointed guardian or during a period, as determined by
3 the initially appointed guardian, when the initially appointed guardian is
4 temporarily unable to fulfill his or her duties, including during an extended vacation
5 or illness. The powers and duties of the standby guardian shall be the same as those
6 of the initially appointed guardian. The standby guardian shall receive a copy of the
7 court order establishing or modifying the initial guardianship, and the order
8 designating the standby guardian. Upon assuming office, the standby guardian
9 shall so notify the court. Upon notification, the court shall issue new letters of
10 guardianship that specify that the standby guardianship is permanent or that
11 specify the time period for a limited standby guardianship.

****NOTE: Your proposal contains two provisions concerning standby guardians for minors. 1997 Wisconsin Act 334 created s. 48.978 (appointment or designation of standby guardian of a child). Because these provisions exist in current law, I have not drafted the provisions in your proposal. Your redraft instructions are for use to "add" this to s. 54.52; do you want me to renumber all of s. 48.978, stats., into ch. 54? There are substantial problems of reconciliation, including, in s. 48.978 (1) (c), stats., a definition of "incapacity" that differs from the definition in s. 54.01 (10).

12 **SECTION 226.** 880.38 (title) of the statutes is renumbered 54.25 (title) and
13 amended to read:

14 **54.25 (title) Guardian Duties and powers of guardian of the person of**
15 **incompetent.**

16 **SECTION 227.** 880.38 (1) of the statutes is repealed.

17 **SECTION 228.** 880.38 (2) of the statutes is renumbered 54.25 (1) (b) (intro.) and
18 amended to read:

19 **54.25 (1) (b) (intro.)** ~~A guardian of the person shall endeavor~~ Endeavor to
20 secure any necessary care, ~~or services or appropriate protective placement on behalf~~
21 ~~of for the ward.~~ that are in the ward's best interests, based on all of the following:

SECTION 229. 880.38 (3) of the statutes is renumbered 54.25 (1) (a) and amended to read:

54.25 (1) (a) ~~A guardian of the person of an incompetent appointed under s. 880.33 shall make~~ Make an annual report on the condition of the ward to the court that ordered the guardianship and to the county department designated under s. 55.02. That county department shall develop reporting requirements for the guardian of the person. The report shall include, ~~but not be limited to,~~ the location of the ward, the health condition of the ward, any recommendations regarding the ward, and a statement of as to whether or not the ward is living in the least restrictive environment consistent with the needs of the ward. ~~The guardian may fulfill the requirement under this subsection by submitting the report required under s. 55.06~~ (10).

SECTION 230. 880.39 (title) of the statutes is repealed.

SECTION 231. 880.39 of the statutes is renumbered 54.18 (4) and amended to read:

54.18 (4) ~~Any~~ A guardian of the person or of the estate is immune from civil liability for his or her acts or omissions in performing the duties of the guardianship if he or she performs the duties in good faith, in the best interests of the ward, and with the degree of diligence and prudence that an ordinarily prudent person exercises in his or her own affairs.

(END)